

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNA ROCK and U.S. POSTAL SERVICE,
BROOKSVILLE POST OFFICE, Spring Hill, FL

*Docket No. 97-1047; Submitted on the Record;
Issued January 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

On December 16, 1995 appellant, then a general postal clerk, filed a claim for an occupational disease (Form CA-2) alleging that she first became aware of her stress condition on December 1, 1995. Appellant alleged that her stress was caused by her employment as a secretary for Eddie Haab, an employing establishment customer service manager. She stated that she performed a great deal of paperwork involving approximately 50 employees. Appellant also stated that the manner in which she and other employees on light duty were treated was unfair and unjust. She further stated that it was understood in her position that she was not permitted to discuss the nature of corrective action and what went on inside the offices while working in this position for six years. Additionally, appellant stated that she knew what would happen if information was leaked out to the workroom floor. Appellant then stated that as conditions became more and more stressful, she knew that it would not be long until she was next on Mr. Haab's list. She explained that many employees wrote letters regarding working conditions, but that they were swept under the carpet. Appellant concluded that she tried to work under the existing conditions, but that it started "eating away" at her and that she broke down after being harassed by Mr. Haab and his supervisor. She stopped work on November 29, 1995.

Appellant's claim was accompanied by employment records and by medical evidence. Dr. Alan K. Sichelman, a Board-certified pediatrician's December 7, 1995 disability certificate indicated a diagnosis of severe stress and anxiety. Dr. Sichelman's December 12, 1995 duty status report revealed that appellant had severe anxiety caused or aggravated by employment activity by placing a checkmark in the box marked "yes." His disability certificates dated November 30 and December 7, 1995, indicated that appellant had severe stress and anxiety. Dr. Sichelman's disability certificates dated December 15, 1995, and an undated one revealed that appellant was under stress and anxiety that were caused by her employment. An April 18, 1978 fitness-for-duty examination of Dr. Virgil A. Bittiker, an osteopath, revealed the physical

and environmental factors of appellant's employment as a part-time schedule clerk with the employing establishment, his findings on physical examination and appellant's medical history accompanied appellant's claim.

In a December 11, 1995 letter controverting her claim, the employing establishment contended that appellant's emotional condition was self-generated and the medical documentation lacked a history of the incident that caused appellant's emotional condition. The employing establishment explained that, on December 1, 1995, appellant left the premises alleging that she was sick after refusing to serve as lobby director.

In a December 11, 1995 narrative statement, appellant alleged that she was being discriminated against by Mr. Haab and Harold Thomas McGowan, an employing establishment customer service supervisor. She described Mr. Haab's reaction towards her when she put in a bid for a position. Appellant explained that the postmaster, Tom Magilligan, provided a proposal for her to receive training, but when Mr. Haab received information about this he gave Mr. McGowan a direct order to cancel the proposal. She described that she became upset when Mr. Haab instructed her to act as the lobby director during the holiday season and that he shrugged off her request to see a shop steward. Appellant stated that she requested sick leave from Mr. Haab and noted his request for "acceptable medical evidence." She also noted a December 4, 1995 incident where Mr. McGowan had a discussion with her regarding the use of sick leave, use of the telephone for business purposes and his denial of her request to have a shop steward present during this discussion. Appellant further noted that on December 4, 1995 she received a Form 13 in her mailbox from Mr. Haab changing her work hours. She stated that on December 7, 1995 she was harassed by Mr. Haab while she was looking for a leave slip for a doctor's appointment that she turned in on December 5, 1995. Appellant stated that Mr. Haab questioned her about the location of the doctor's office, the appointment time and the length of time for the appointment. She also stated that she called Mr. Haab from her physician's office to report to him and that he harassed her by refusing to talk with a woman from the office or the physician.

The employing establishment submitted a December 28, 1995 narrative statement of Fred Schwefringhaus, an employing establishment employee, indicating that he was in appellant's office when Mr. Haab asked him to set up the lobby director cart. Mr. Schwefringhaus stated that he left appellant's office after she requested to see a union representative. He further stated that at no time was Mr. Haab disrespectful towards appellant and that he always showed great respect for appellant and that they had an excellent working condition. Mr. Schwefringhaus also stated that Mr. Haab had an open door policy and that he was always willing to listen while sometimes going above and beyond and that he really cared about his employees.

The employing establishment also submitted Mr. Haab's December 29, 1995 narrative statement, who contended that appellant misrepresented his statements regarding her bid on a position. Mr. Haab stated that appellant waited to approach him when he was busy and she did so when she was upset and in a demanding manner. He stated that he scheduled appellant for training in March 1995, but that she canceled the training due to pressure from her husband. He noted another time appellant canceled training. Mr. Haab explained that when he spoke to

Mr. McGowan while he was on vacation, he wanted appellant to either accept or withdraw her bid on jobs. Regarding appellant's assignment as lobby director, Mr. Haab stated that he spoke to appellant about the proper way to get people to do things for her when she worked in this position the previous year. Mr. Haab stated that he spoke with appellant and Don Sweeney, an employing establishment employee and they assured him that there were no problems working together. He stated that when he asked appellant to work as lobby director again, he had no idea that there were any problems. Mr. Haab stated that he did not instruct Mr. McGowan to talk to appellant. He noted that appellant was asked for acceptable medical documentation as anyone else who went home sick because they did not want to perform their job. Mr. Haab explained that appellant's work hours were changed to coincide with the hours of the window. He noted when the window closed at 5:00 p.m., there were still customers to be waited on and appellant had to serve them. Mr. Haab alleged that appellant was going through personal papers on his desk when in search of her sick leave request. He stated that appellant told him to telephone her physician's office, but that he said it would not be necessary. Mr. Haab indicated then stated that appellant called from her physician's office and asked him to tell the physician or nurse what to write on her note. He explained to appellant that he could not tell them what to write only that it had to show that she was incapacitated for work.

In a December 31, 1995 narrative statement, Michael A. Fernandez, an employing establishment customer service supervisor, indicated that he never witnessed any lobby director incident and that he did not have to check with Mr. Haab before making a decision, but asked for his opinion on many occasions because Mr. Haab was his boss and more experienced. Mr. Fernandez stated that he asked appellant what was wrong when she requested sick leave and that she responded she had a cold. He noted that appellant needed documentation showing why she became incapacitated for work.

In a January 3, 1996 narrative statement, Mr. Haab stated that appellant explained to him that she was having problems at home because her husband wanted her to quit work. He noted appellant's cancellation of training and withdrawal of a bid on a position due to pressure from her husband. Mr. Haab indicated that on two occasions he requested that the Postmaster assist in reducing appellant's work load. He explained that in September 1995 appellant put in for another job at a different location and that she became upset when she found out that another employee was awarded the position. Mr. Haab noted that appellant became upset when he asked her to work as the lobby director and that she went home sick.

In a February 14, 1996 letter, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested appellant to submit additional factual and medical evidence supportive of her claim.

In a March 14, 1996 statement, appellant alleged that she never received a decreased work load and that Mr. Haab exhibited favoritism. Appellant noted her experience as lobby director and a confrontation she had with Mr. Sweeney in December 1994. Appellant stated that due to Mr. Haab's harassment she had to accept another position at the main post office, which required her to drive 42 miles round-trip rather than 18 miles round-trip. Appellant stated that even in this new location she continued to be harassed in that the employing establishment failed to timely forward her mail to her new work location.

Appellant submitted a February 26, 1996 medical report from Dr. Sichelman, a Board-certified pediatrician, revealing a history of his treatment of appellant, a diagnosis of acute anxiety reaction and a history of harassment by appellant's supervisor. Dr. Sichelman opined that appellant's work situation had seemingly improved and that there was no doubt that her situation led to her illness.

In a December 22, 1995 statement, Mr. McGowan indicated that he had a discussion with appellant regarding her excessive use of sick leave. Mr. McGowan explained that he would take this type of corrective action with anyone because it is his responsibility as a supervisor to control absences. He further explained that he discussed appellant's use of the telephone with her because he became frustrated when appellant would talk on the telephone about her children, grandchildren or some other personal matter while other lines went unanswered. Mr. McGowan stated that this interrupted his work. In a October 7, 1996 narrative statement, he explained why certain employees mentioned by appellant were handled in a particular manner. Mr. McGowan explained that personal telephone calls were limited because customers could not get through to the office and that a pay telephone had been placed in the breakroom for employee use. Regarding appellant's bid in November 1995, Mr. McGowan stated that he did not draw up the position details nor did he complete the clerk schedule. He noted that appellant told him that she would get even with Mr. Haab one day. Concerning the December 1, 1995 incident, Mr. McGowan stated that he did not know what happened between appellant and Mr. Haab, but that when he found out it was about appellant's use of sick leave he had a discussion with her regarding this matter. He reiterated his previous comments regarding appellant's excessive use of leave.

By decision dated November 18, 1996, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

In the present case, appellant has alleged that she was harassed by her supervisors. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁴ Mere perceptions alone of harassment and discrimination are not compensable under the Act.⁵ To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.⁶

The specific allegations made by appellant do not establish harassment or discrimination by her supervisors inasmuch as they were refuted by Mr. Haab, Mr. McGowan and Mr. Schwefringhaus. Mr. Haab noted that appellant threatened him with retaliation which was corroborated by Mr. McGowan. Mr. McGowan responded to appellant's allegation regarding mistreatment of certain employees by the employing establishment in explaining why actions were taken against these employees. The Board, therefore, finds that the record is devoid of probative evidence establishing harassment or discrimination in this case. Consequently, appellant has failed to establish a compensable employment factor with regard to these allegation.

Regarding appellant's reaction to not receiving a bid on a particular job, the Board has previously held that denials by an employing establishment of a request for a different job or promotion are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.⁷ Thus, appellant has not alleged a compensable factor of employment under the Act.

Appellant's allegations regarding her use of sick leave⁸ and the telephone, her request for training, her commute to work⁹ and denial of union representation¹⁰ relate to administrative

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Donna Faye Cardwell*, *supra* note 3; *Pamela R. Rice*, *supra* note 2.

⁵ *Wanda G. Bailey*, 45 ECAB 835 (1994); *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ *Ruthie M. Evans*, *supra* note 5.

⁷ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁸ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, *supra* note 7.

⁹ *Adele Garafolo*, 43 ECAB 169 (1991).

actions of her supervisors. Although the handling of such personnel matters is generally related to employment, it is an administrative function of the employer, not a duty of the employee.¹¹ An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.¹² Responses from Mr. Haab, Mr. Fernandez and Mr. McGowan refute any allegation of error or abuse involving the above administrative matters. Therefore, appellant has failed to establish a compensable employment factor.

The record, however, establishes several compensable work factors, which include a change in appellant's work schedule¹³ and an increase in her work load.¹⁴ These events are established as having occurred by evidence present in the case record. As they arise out of and in the course of appellant's assigned duties they constitute compensable factors of her employment.

However, appellant's burden of proof is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁵

The medical evidence of record in this case fails to establish that appellant's emotional condition was caused by the above compensable employment factors. The April 18, 1978 fitness-for-duty medical report of Dr. Bittiker, an osteopath, noting appellant's physical and environmental factors of her employment, his findings on physical examination and appellant's medical history failed to address whether appellant had an emotional condition caused by compensable employment factors. Therefore, it is insufficient to establish appellant's burden.

The disability certificates of Dr. Sichelman, a Board-certified pediatrician, indicated that appellant had severe stress and anxiety but failed to discuss whether or how the diagnosed condition was caused by specific factors of appellant's employment.¹⁶ Dr. Sichelman's disability certificates and February 26, 1996 medical report revealing that appellant's emotional condition was caused by her employment failed to identify specific factors that caused her

¹⁰ *Wanda G. Bailey*, *supra* note 5.

¹¹ *Anne L. Livermore*, 46 ECAB 425 (1995).

¹² *See Sharon R. Bowman*, 45 ECAB 187 (1993).

¹³ *See Gloria Swanson*, 43 ECAB 161 (1991).

¹⁴ *Frank A. McDowell*, 44 ECAB 522 (1993).

¹⁵ *William P. George*, 43 ECAB 1159, 1168 (1992).

¹⁶ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

condition. Therefore, Dr. Sichelman's disability certificates and medical report are insufficient to establish appellant's burden.

Dr. Sichelman's December 5, 1995 Form CA-16 revealed that appellant's severe anxiety was caused or aggravated by the described employment activity by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.¹⁷ Inasmuch as Dr. Sichelman did not provide any rationale to support his opinion, his report is insufficient to establish appellant's burden.

The November 18, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
January 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹⁷ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).